

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
THE MAMMA MIA! USA TOUR 2  
LIMITED PARTNERSHIP, a New York  
Limited Partnership,

Petitioner,

-against-

THEATRICAL ARTS INTERNATIONAL, INC. and  
THEATRICAL ARTS INTERNATIONAL  
FOUNDATION, California corporations,

Respondents.  
-----X

ECF CASE

06 Civ. 6079 (RCC)

**AFFIRMATION OF  
JOHN G. BURGEE, ESQ.**

**John G. Burgee, Esq.,** declares and says;

1. I am an attorney admitted to practice in the Courts of the State of California as well as the United States District Court of the Northern, Central and Southern Districts of California. I am general litigation counsel for Respondent Theatrical Arts International, Inc. ("Theatrical Arts") and Theatrical Arts International Foundation ("Foundation") and I am counsel of record for Theatrical Arts in the legal action before the Superior Court for the State of California for the County of San Bernardino, titled *Theatrical Arts International, Inc. v. The Mamma Mia! USA Tour 2 Limited Partnership*, Case No. SCVSS 138221 (the "California action").

2. I prepared the California action based upon the threat of Petitioner Mamma Mia! USA Tour 2 Limited Partnership ("Mamma Mia!") to commence arbitration proceeding pursuant to a fraudulent contract. Among other things, the California action seeks to adjudicate whether the purported written contract between the parties is valid or invalid. The California action was

filed on May 31, 2006 and served on August 2, 2006. A true and correct copy of the Affidavit of Service of the Summons and Complaint in the California action is attached hereto as Exhibit A.

3. Mamma Mia! commenced this proceeding in New York on August 3, 2006. The central issue of this action is the enforcement of the purported written contract between the parties which is the subject matter of the California action. This action is therefore a parallel proceeding to the action pending in California concerning the very issues raised by Petitioner's application to enjoin litigation and compel arbitration in this Court.

4. I informed Al Daniel, Mamma Mia!'s counsel about the California action on July 21, 2006. Since I had been out-of-town, I did not receive the arbitration demand Mr. Daniel sent to me until July 20, 2006. I was out-of-town for another week after that, but promptly faxed Mr. Daniel a courtesy copy of the California action upon my return on August 1, 2006.

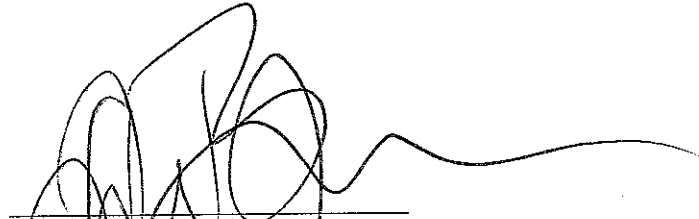
5. Mamma Mia! could have easily sought to enforce the purported contract through a motion to compel arbitration in the California action pursuant to California Code of Civil Procedure Section 1281.2. Although there is a venue provision in the purported contract regarding arbitration, there is no venue provision regarding litigation or court actions. (In any case, Theatrical Arts contends that the agreement, including the arbitration and venue provisions, is void in its entirety.) Mamma Mia! chose not to do so and commenced the duplicative proceedings in New York.

6. In the California action, the Honorable Donald Alvarez, Judge, who has been assigned as the judge for all purposes, held a hearing on August 14, 2006. Mr. Daniel and his office participated in the hearing by telephone. (The California Court allows telephonic appearances.) Judge Alvarez found that the California had been filed first and set a hearing as to whether the arbitration should be enjoined or should proceed for August 28, 2006. A true and

correct copy of the Order of the California Court is attached hereto as Exhibit B. During the hearing, Mr. Daniel objected that the case required the application of Federal Law. Judge Alvarez stated that he could consider and apply Federal law as appropriate, and had done so in past cases. Judge Alvarez further stated that he could and would order arbitration in New York if he determined that it was proper.

7. I filed an original of the Declaration of Joseph Henson in the California action, a true and correct copy of which is filed with Respondent's Opposition herein. This declaration was served by Federal Express on Petitioner's counsel on August 10, 2006. I received confirmation from Federal Express that Petitioner's counsel received the declaration on August 11, 2006.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on August 14, 2006, at Woodland Hills, California.



John G. Burgee, Esq.  
Burgess & Abramoff, PC  
20501 Ventura Boulevard, Suite 262  
Woodland Hills, California 91364  
Telephone: (818) 264-7575

**EXHIBIT A**

**JOHN G. BURGEE, ESQ. (State Bar No. 132129)**  
**BURGEE & ABRAMOFF, P. C.**  
20501 Ventura Boulevard, Suite 262  
Woodland Hills, California 91364  
(818) 264-7575

Attorneys for Plaintiff  
THEATRICAL ARTS INTERNATIONAL, INC.

**FILED**  
SUPERIOR COURT  
COUNTY OF SAN BERNARDINO  
SAN BERNARDINO DISTRICT

**AUG 10 2006**

BY *John M. DeBono*  
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN BERNARDINO

**THEATRICAL ARTS INTERNATIONAL, INC.,**  
a California corporation,  
Plaintiff(s),

Index No. SCVSS 138221

-against-

**THE MAMMA MIA! USA TOUR 2 LIMITED**  
**PARTNERSHIP, a New York limited**  
**partnership, and DOES 1 through 50 inclusive,**  
Defendant(s).

**AFFIDAVIT OF SERVICE**

STATE OF NEW YORK )  
S.S.:  
COUNTY OF NEW YORK)

**OTIS OSBORNE**, being duly sworn, deposes and says:

I am not a party to the action, am over 18 years of age, and am employed by the attorney service, DLS, INC.

That on the 2<sup>nd</sup> day of August 2006, at approximately 11:49 a.m., deponent served a true copy of the **SUMMONS AND COMPLAINT FOR DECLARATORY RELIEF AND INJUNCTION RELIEF** upon The Mamma Mia! USA Tour 2 Limited Partnership c/o Nina Lannan Associates at 1450 Broadway, Suite 2011, New York, NY 10018, by personally delivering and leaving the same with Roseanna Sharrow, G M Associate, who informed deponent that she is an agent authorized by appointment to receive service at that address.

Roseanna Sharrow is a white female, approximately 32 years of age, stands approximately 5 feet 8 inches tall, and weighs approximately 180 pounds with brown hair and blue eyes.

*John M. DeBono*  
**OTIS OSBORNE #870139**

Sworn to before me this  
4<sup>th</sup> day of **August**, 2006

*John M. DeBono*  
NOTARY PUBLIC

*John M. DeBono*  
Notary Public  
New York  
County of San Bernardino  
Filed in New York County

**EXHIBIT B**

1 **JOHN G. BURGEE, ESQ.** (State Bar No. 132129)  
2 **BURGEE & ABRAMOFF P.C.**  
3 20501 Ventura Boulevard, Suite 262  
Woodland Hills, California 91364  
(818) 264-7575

4 Attorneys for Plaintiff  
5 **THEATRICAL ARTS INTERNATIONAL, INC.**

*Copy* **FILED**-Central District  
SUPERIOR COURT  
SAN BERNARDINO COUNTY

**AUG 14 2006**

By *Stephanie Chandler*  
Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF SAN BERNARDINO

12 THEATRICAL ARTS INTERNATIONAL, )  
INC., a California corporation, )

13 Plaintiff, )

14 vs. )

15 THE MAMMA MIA! USA TOUR 2 )  
16 LIMITED PARTNERSHIP, a New York )  
limited partnership, and DOES 1 through 50, )  
inclusive, )

17 Defendants. )  
18

CASE NO. SCVSS 138221

~~**[PROPOSED] TEMPORARY TEMPORARY**~~  
~~**RESTRAINING ORDER AND ORDER**~~  
**TO SHOW CAUSE RE: PRELIMINARY**  
**INJUNCTION**

Date: August 14, 2006

Time: 8:30 a.m.

Dept.: S6

Trial Date: None set.

19 TO DEFENDANT THE MAMMA MIA! USA TOUR 2 LIMITED PARTNERSHIP AND ITS  
20 COUNSEL:

21 The Application of Plaintiff THEATRICAL ARTS INTERNATIONAL, INC. for a  
22 Temporary Restraining Order and Order to Show Cause re: Preliminary Injunction against  
23 Defendant THE MAMMA MIA! USA TOUR 2 LIMITED PARTNERSHIP was heard on  
24 August 10, 2006 in Department S6 of the above-entitled Court, the Honorable Donald Alvarez,  
25 Judge presiding. Upon consideration of the papers submitted and argument of counsel, and good  
26 cause appearing therefor,

27 IT IS ORDERED that Defendant THE MAMMA MIA! USA TOUR 2 LIMITED  
28 PARTNERSHIP appear on August 28, 2006, at 8:30 a.m. in Department S6 of this Court located

1 at 351 North Arrowhead Avenue, San Bernardino, California 92415, and show cause, if any you  
2 have, why you, your agents, attorneys, assigns and all those acting in concert with you, should  
3 not be restrained and enjoined pending trial of this action from:

- 4 (1) Instigating, prosecuting or proceeding in any way with an arbitration action based  
5 upon the disputes between the parties as alleged in Plaintiff's Complaint herein,  
6 including the American Arbitration Association case number 13 459 01 484 06;  
7 and,  
8 (2) Requesting, pursuing, seeking or enforcing any order or other relief in any other  
9 legal action, including the action current pending in the United States District  
10 Court for the Southern District of New York, that purports to enjoin this action or  
11 Plaintiff's maintenance, prosecution or continuance of this action, or that  
12 otherwise purports to interfere with the jurisdiction of this Court or the ability of  
13 the Court to resolve the issues presented in Plaintiff's Complaint.

14 PENDING HEARING on the foregoing Order to Show Cause,

15 IT IS ORDERED that you, your agents, attorneys, assigns and all those acting in concert  
16 with you, ARE HEREBY RESTRAINED AND ENJOINED from:

- 17 (1) Instigating, prosecuting or proceeding in any way with an arbitration action based  
18 upon the disputes between the parties as alleged in Plaintiff's Complaint herein,  
19 including the American Arbitration Association case number 13 459 01 484 06;  
20 and,  
21 (2) Requesting, pursuing, seeking or enforcing any order or other relief in any other  
22 legal action, including the action current pending in the United States District  
23 Court for the Southern District of New York, that purports to enjoin this action or  
24 Plaintiff's maintenance, prosecution or continuance of this action, or that  
25 otherwise purports to interfere with the jurisdiction of this Court or the ability of  
26 the Court to resolve the issues presented in Plaintiff's Complaint.

27 This Order to Show Cause and supporting papers shall be served on Defendant through  
28 its counsel Al J. Daniels, Jr., Cowan, DeBaets, Abrahams & Sheppard, LLP, 41 Madison



1 Avenue, New York, New York 10010 by overnight courier service sent on August 10, 2006.  
2 Any opposition to the issuance of the requested preliminary injunction shall be filed and served  
3 on Plaintiff's counsel ~~by overnight courier~~ <sup>FAX</sup> service by August <sup>By Noon</sup> 22, 2006. Any reply to the  
4 opposition shall be filed and served on Defendant's counsel by ~~overnight courier~~ <sup>FAX</sup> service by  
5 August 24, 2006.

6 The restraining order granted herein shall remain in effect until the determination of the  
7 Order to Show Cause.

8 Dated: AUG 14 2006

9 **DONALD ALVAREZ**  
10 JUDGE OF THE SUPERIOR COURT  
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